



## OPINION

This appeal involves the termination of a mother's parental rights to three of her children who are between five and ten years of age. Almost four years after the children had been removed from their mother's custody, the Department of Children's Services filed a petition in the Dickson County Juvenile Court to terminate the mother's parental rights. Following a two-day hearing, the juvenile court terminated the mother's parental rights in accordance with Tenn. Code Ann. § 36-1-113(g)(3)(A) (Supp. 1997). On this appeal, the mother asserts that the juvenile court's findings are not supported by clear and convincing evidence and that the trial court should have left the record open to enable her to present additional evidence of her parental fitness. We affirm the judgment terminating the mother's parental rights because the Department has presented clear and convincing evidence establishing the statutory grounds for terminating the mother's parental rights and demonstrating that the children's interests will be best served if they can be integrated into a stable and permanent home as soon as possible.

### I.

C.L.H., the 26-year-old mother whose rights are at issue in this case, had a difficult childhood in Ohio. She was the youngest of four children born to a father prone to violence and drinking and a mother who repeatedly abandoned the family. During her early years, C.L.H. lived with one or the other of her parents, with various relatives, and with foster families. When she was twelve years old, C.L.H. accused her father of sexually abusing her. After living briefly with her mother, she was placed in foster care. She soon returned to live with her mother, and when she was sixteen, she discovered that she was pregnant following a brief relationship with J.E. On December 26, 1988, C.L.H. gave birth to S.M.L.

After C.L.H.'s mother abandoned her again following S.M.L.'s birth, C.L.H. lived for a time with a married sister and then in foster care. Eventually, she and S.M.L. moved to Dickson, Tennessee to live with her aunt and her father. The Tennessee Department of Human Services first began providing services to C.L.H. in 1990 following repeated reports that she was neglecting S.M.L. C.L.H. later struck

up a relationship with J.P. and on April 14, 1992 gave birth to C.B.L., her second daughter.

Soon after C.B.L.'s birth, C.L.H. met and married D.E.J. On May 8, 1993, she gave birth to D.K.J., her third child and first son.<sup>1</sup> On July 23, 1993, the Department of Human Services filed a petition in the Dickson County Juvenile Court seeking temporary custody of S.M.L., C.B.L., and D.K.J. on the grounds that the children were neglected and physically abused. The juvenile court granted the petition, and the Department placed the three children in foster homes. S.M.L. revealed to her caseworkers that she had been sexually abused by her maternal grandfather, by a neighbor, and by other children.<sup>2</sup> C.L.H. did not cooperate with the Department's efforts to investigate these complaints or to protect her children from further abuse. She appeared unable to understand how sexual abuse could harm her children.

The Department developed a plan of care with the goal of returning the children to C.L.H.. The plan required C.L.H. (1) to attend individual counseling to address her non-protection and neglect of the children, (2) to attend parenting classes, (3) to utilize homemaker services, (4) to establish a stable residence, (5) to provide prompt and truthful information to caseworkers regarding her status, and (6) to have no contact with her father. During the course of the next three years, C.L.H. repeatedly failed to improve her parenting skills or to remediate the causes that led to the children's removal in the first place. In addition to being unable to maintain a fixed address or steady employment, she had frequent brushes with the law and failed to participate in a meaningful way in the programs and services made available to assist her in improving her parenting skills.

During this same period, C.L.H. was married briefly and gave birth to her fourth child, T.H., on June 29, 1994.<sup>3</sup> After placing T.H. with her brother and sister-in-law, C.L.H. moved back to Ohio in August 1996 and lived briefly with her brother

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<sup>1</sup>This marriage was troubled from the beginning. C.L.H. and D.E.J. eventually separated and were divorced in May 1994.

<sup>2</sup>The record in this case reveals that S.M.L.'s maternal grandfather has a bipolar disorder and a history of alcohol abuse. In addition to the allegation that he sexually abused his daughter and granddaughter, the record contains allegations that he has sexually abused other young women.

<sup>3</sup>C.L.H.'s parental rights with regard to T.H. are not involved in this proceeding.

and then with her mother. In December 1996, following disagreements with her relatives, she moved into her own apartment. A representative of the Athens County Children Services Board conducted a home study of C.L.H.'s new environment and in April 1997 recommended strongly against the return of the children for many of the same reasons noted by the Tennessee authorities when the children were first removed in 1993. Shortly after receiving this report, the Department filed a petition requesting the termination of C.L.H.'s parental rights, as well as the parental rights of J.E., J.P., and D.E.J., the biological fathers of her three oldest children. C.L.H. also filed a petition seeking the return of her children. Following a two-day hearing in June 1997, the juvenile court terminated C.L.H.'s parental rights.<sup>4</sup>

## II.

Proceedings involving the termination of parental rights implicate the biological parents' constitutionally protected interests in the care and custody of their children. *See O'Daniel v. Messier*, 905 S.W.2d 182, 186 (Tenn. Ct. App. 1995). Because terminating parental rights has the legal effect of reducing biological parents to the role of complete strangers as far as the children are concerned, *see In re Adoption of Dearing (Adcock v. Saliba)*, 572 S.W.2d 929, 932 (Tenn. Ct. App. 1978), decisions to terminate parental rights are permissible only when continuing the parent-child relationship poses a substantial threat of harm to the children. *See Petrosky v. Keene*, 898 S.W.2d 726, 728 (Tenn. 1995); *Hawk v. Hawk*, 855 S.W.2d 573, 581 (Tenn. 1993).

Due to the fundamental interests at stake in proceedings of this sort, parental rights may be terminated only if one of the statutorily defined circumstances requiring termination have been proved by clear and convincing evidence, *see Tenn. Code Ann. § 36-1-113(c)(1)* (Supp. 1997); *Dept. of Human Servs. v. Defriece*, 937 S.W.2d 954, 960 (Tenn. Ct. App. 1996), and if terminating parental rights is in the child's best interests. *See Tenn. Code Ann. § 36-1-113(c)(2)* (Supp. 1997). This

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<sup>4</sup>The juvenile court also terminated the parental rights of the children's biological fathers. None of the fathers have appealed from those portions of the judgment. The juvenile court did not specifically dispose of C.L.H.'s petition for the return of her children. This omission is simply an oversight that can be easily corrected on remand. By granting the Department's motion to terminate C.L.H.'s parental rights, the trial court necessarily determined that her petition for the return of her children was not well-taken. Correcting this oversight would not entitle C.L.H. to a second bite at the apple.

heightened burden of proof reflects a recognition of the public and private interests at stake in these proceedings and a policy decision that a biological parent's legal relationship to his or her child should not be severed if there exists any serious or substantial doubt concerning the correctness of the decision. *See O'Daniel v. Messier*, 905 S.W.2d at 187-88.

The statutory ground on which the termination in this case is based is found in Tenn. Code Ann. § 36-1-113(g)(3)(A) (Supp. 1997). This section provides that parental rights may be terminated upon the introduction of clear and convincing evidence (1) that the child has been removed from the parent's home by order of a court for six months, (2) that the conditions which led to the child's removal, or other similar conditions, still persist, (3) that there is little likelihood that these conditions will be remedied at an early date so that the child can be returned to the parent in the near future, and (4) that the continuation of the parent-child relationship will greatly decrease the child's chances of early integration into a stable and permanent home.

### III.

C.L.H. lost custody of her three children in July 1993 because her oldest daughter complained of sexual abuse at the hands of her grandfather and because C.L.H. was unable to provide a stable, nurturing home for her children. Soon after she lost custody of her children, the Department developed a detailed plan designed to enable C.L.H. to regain custody. While she has made some effort to comply with the requirements of this plan, C.L.H. has been unable to demonstrate that she can provide the children with a stable, safe home environment or that she has acquired the parenting skills she clearly lacked in 1993.

C.L.H. has also been unable to maintain a stable home or steady employment. She moved fourteen times between the time she lost custody of her children and her move to Ohio, and she has lived in three different places since moving to Ohio. During this time, she has stayed or lived with persons who undermined the stability of her home, including her father who has been the subject of several child sexual abuse complaints, an abusive husband, a suspected drug dealer, and another sex offender. She was convicted for writing bad checks, theft, and aggravated burglary, and served time in jail in 1996 for violating her probation. Her employment has been

sporadic and short-lived. After moving back to Ohio, she attempted to work at three different jobs at the same time but lost all these jobs due to an illness. At the time of the hearing, C.L.H. insisted that she was training to become a nursing assistant but offered no corroborating proof of employment.

C.L.H.'s most serious shortcoming is her continuing ambivalence about her eldest daughter's complaint of sexual abuse by her maternal grandfather. Since she lost custody of her children, C.L.H. has vacillated over whether or not her father sexually abused her daughter, even though she herself had complained of the same conduct by her father when she was twelve. C.L.H. has lived with her father on two occasions since 1993 and has permitted her father to babysit her youngest child who has not been placed in foster care. C.L.H.'s actions since 1993 indicate that she has not acquired an adequate understanding of her own and her daughter's victimization at the hands of her father.

C.L.H.'s decision to move back to Ohio has not materially improved the prospects that she will, in the near future, be able to remediate the problems that caused her to lose custody of her three oldest children in 1993. She has become estranged from her mother and brother who live in Ohio and is now living on her own with support from public assistance. She has moved three times since returning to Ohio; she has been unable to hold down steady employment; and she has apparently discontinued her counseling sessions. Even though C.L.H.'s physical surroundings may have improved, the representative of the Athens County Children Services Board strongly recommended against reuniting her with her children. This recommendation was based on (1) C.L.H.'s "total lack of support from family or friends," (2) her "apparent reluctance to believe that her father could be a sexual abuser," (3) her possible inability or unwillingness "to protect her children if they should be victimized by anyone significant in her life," and (4) her failure to even make an attempt to go to counseling since moving back to Ohio.

The three children who are at the heart of this proceeding are now between five and nine years of age. They were removed from their mother's custody almost five years ago. During that time, these children have been in foster care limbo while their mother has made repeated, unsuccessful attempts to demonstrate that their interests will be best served by returning them to her. Nothing is to be gained by giving

C.L.H. yet another chance to demonstrate her fitness when the record contains no objective basis for concluding that she might succeed this time. After five long years of foster care, these three children deserve a chance to be integrated into a stable and permanent home.

#### IV.

As a final matter, C.L.H. asserts that the juvenile judge should have continued the case to enable her to present some corroborating proof of her assertions that she has returned to counseling and that she has found stable employment. C.L.H. had ample notice that the Department of Children's Services had filed a petition to terminate her parental rights and was well aware of the purpose of the proceedings. As far as this record shows, nothing prevented her or her lawyer from assembling the proof needed to rebut the Department's claim for removal under Tenn. Code Ann. § 36-1-113(g)(3)(A). Accordingly, the juvenile court did not err by declining to delay the proceeding to enable her to obtain additional proof. Even had C.L.H. convinced the juvenile judge that she was employed and that she had returned to counseling, these activities would not have undermined the Department's clear and convincing evidence that her children had been removed from her custody for more than six months, that the conditions requiring their removal persisted and were not likely to be remedied at an early date, and that terminating C.L.H.'s parental rights would improve the children's chances of early integration in to a stable and permanent home.

#### V.

We affirm the final decree of guardianship terminating C.L.H.'s parental rights with regard to S.M.L., C.B.L., and D.K.J. and remand the case to the juvenile court for whatever further proceedings may be required. We also tax the costs of this appeal to the Department of Children's Services.

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WILLIAM C. KOCH, JR., JUDGE

CONCURS:

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BEN H. CANTRELL, JUDGE

CONCURS IN SEPARATE OPINION:

HENRY F. TODD, PRESIDING JUDGE  
MIDDLE SECTION